



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74783; File No. SR-BX-2015-021)

April 22, 2015

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX BX, Inc. Relating to NASDAQ OMX BX Equities Market Participant Registration and Sponsored Access

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 16, 2015, NASDAQ OMX BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4611, entitled “NASDAQ OMX BX Equities Market Participant Registration” and adopt a new Rule 4615, entitled “Sponsored Participants.”

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).³

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaqomxbx.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 4611, entitled "NASDAQ OMX BX Equities Market Participant Registration" to: (i) amend this rule, which today applies solely to members conducting an equities business on the Exchange, to apply to the rule text to members conducting an options business on the Exchange; and (ii) delete 4611(d) pertaining to Sponsored Access and relocate the text to new Rule 4615 and also apply the rule to members transacting an options business.

Exchange Rule 4611 today applies solely to the BX Equities market. This rule explains the various conditions that registration with the Exchange shall be conditioned upon initially and then subsequently imposing a continuing obligation to comply with the requirements. The requirements include a relationship with a clearing agency, compliance with Rules and procedures for use of the Trading System, rules concerning equipment usage, and compliance with rules regarding the acceptance and settlement of a trade. Rule 4611 requires reporting of noncompliance by the member and permits the Exchange to impose temporary restrictions to address a system problem. At the time this rule was adopted in 2008 the Exchange did not operate an options market. In 2012, BX received

approval to establish a new options market.⁴ At this time, the Exchange intends to apply the provisions of Rule 4611 to all of its members similar to the NASDAQ Stock Market LLC (“Nasdaq”) Rule 4611.⁵ The Exchange is removing all references to “Equities” in Rule 4611 and adding the word “BX,” where appropriate, to apply the Rule to all members of the Exchange, including equities and options members.

The Exchange also proposes to relocate the rule applicable to Sponsored Participant from Rule 4611(d) to a new Rule 4615 to create a separate rule and apply the rule to both equity and options members. Today, 4611(d) refers solely to equity members of the Exchange. The Exchange proposes to title the new rule “Sponsored Participants.”

A Sponsored Participant is an entity with authorized electronic access to the Exchange for the entry and execution of orders. A Sponsored Participant trades under a Sponsoring Member’s execution and clearing identity pursuant to a sponsorship arrangement. The rules continue to require the Sponsoring Member to take responsibility for the Sponsored Participant’s activity on the Exchange. Similar to current Rule 4611(d), the relocated rule text imposes the same responsibilities as the current rule for Sponsored Participants, except that members conducting an options business on the Exchange will also have the ability to offer Sponsored Access.

By way of background, new Rule 4615, similar to Rule 4611(d) continues to require the following elements for the Sponsored Access. First, the Sponsored Participant and its Sponsoring Member must have entered into and maintained an Access Agreement with the Exchange. The Sponsoring Member must designate the Sponsored Participant by name in an

⁴ See Securities Exchange Act Release No. 67256 (Jun 26, 2012), 77 FR 39277 (July 2, 2012) (SR-BX-2012-030).

⁵ See Nasdaq Rule 4611(d).

addendum to the Access Agreement. Second, there must be a Sponsored Participant Agreement between the Sponsoring Member and the Sponsored Participant that contains certain sponsorship provisions, enumerated in full in Rule 4615(b)(ii). The orders of the Sponsored Participant are binding in all respects on the Sponsoring Member. The Sponsoring Member is responsible for the actions of the Sponsored Participant. In addition to the Sponsoring Member being required to comply with the Exchange Certificate of Incorporation, By-Laws, Rules and procedures of the Exchange, the Sponsored Participant shall do so as if such Sponsored Participant were an Exchange member. The Sponsored Participant shall maintain, keep current and provide to the Sponsoring Member a list of individuals authorized to obtain access to the Exchange on behalf of the Sponsored Participant. The Sponsored Participant shall familiarize its authorized individuals with all of the Sponsored Participant's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to the Exchange. The Sponsored Participant may not permit anyone other than authorized individuals to use or obtain access to the Exchange.⁶ The Sponsored Participant shall take reasonable security precautions to prevent unauthorized use or access to the Exchange, including unauthorized entry of information into the Exchange, and agrees that it is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of authorized individuals, and for the trading and other consequences thereof. The Sponsored Participant acknowledges its responsibility to establish adequate procedures and controls that permit it to effectively monitor its employees', agents' and Participants' use and access to the Exchange for compliance with the terms of this agreement. Finally, the Sponsored Participant

⁶ If the Exchange determines that an authorized individual has caused a Member to violate the Exchange's Rules, the Exchange could direct the Member to suspend or withdraw the person's status as an authorized individual.

shall pay when due all amounts, if any, payable to Sponsoring Member, the Exchange, or any other third parties that arise from the Sponsored Participant's access to and use of the Exchange. Such amounts include, but are not limited to applicable exchange and regulatory fees. Third, the Sponsoring Member must provide the Exchange with a Sponsored Participant Addendum to its Access Agreement acknowledging its responsibility for the orders, executions and actions of its Sponsored Participant at issue.

The Exchange would apply the Sponsored Participant rule to members conducting an options business on the Exchange. Today the rule applies solely to members conducting an equities business on the Exchange. The Exchange intends to offer sponsored access in the same manner as NASDAQ to members conducting an options and an equities business.⁷

The Exchange is removing all references to "Equities" in Rule 4611 and adding the word "BX," where appropriate, to apply the Rule to all members of the Exchange, equities and options members.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by continuing to permit market participants gain access to a marketplace. Specifically, the Exchange believes the proposed rule change is consistent with the

⁷ See Nasdaq Rule 4611(d).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.¹⁰

With respect to Rule 4611, the proposed amendments would permit the Rule to be equally applicable to all members of the Exchange, equity and options. Today, the rule applies solely to equity members. The Exchange intends to offer uniform access and permit members conducting an equities and options business on the Exchange to similarly offer Sponsored Access as is the case today on the Nasdaq market with new Rule 4615.¹¹ Similarly, the Exchange intends to impose equal obligations for accessing the System on members conducting either an equities or an options business with revised Rule 4611. The Exchange believes that applying these rules in a uniform manner to all members (equity and options) would result in uniform application of Exchange rules.

Additionally, the Exchange believes the proposed rule changes are consistent with the Section 6(b)(5) requirement that the rules of a national securities exchange be designed to not permit unfair discrimination between customer, issuers, brokers or dealers.¹² New Rule 4615 continues to make clear the obligations of the Sponsoring Members.

¹⁰ Id.

¹¹ See Nasdaq Rule 4611(d).

¹² Id.

The Exchange believes that the changes proposed herein should serve to help market participants seeking access to its marketplace. The Exchange believes that proposed Rule 4615, similar to current Rule 4611(d), allows the Exchange to receive from Sponsoring Members certain information in a uniform format, which aids the Exchange's efforts to monitor and regulate BX's markets and its members and aids the prevention of fraudulent and manipulative practices.

The Exchange believes that the proposed rule change is designed to avoid unfair discrimination among members, as the proposed rule change provides for the Exchange to impose requirements on members in an objective manner. The proposed amendments extend the requirements in Rule 4611 and the access in new Rule 4615 to both equity and options members. Finally, the proposed rule change will help remove impediments to and promote a free and open market and a national market system because it is consistent with rules in place at other exchanges and imposes substantially similar requirements on its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rule 4611 obligations would apply uniformly to both equity and options members. Similarly, new Rule 4615 will treat all members, equity and options members, in a uniform fashion. The proposed rule change seeks to provide clear guidelines on the responsibilities of all parties that provide Sponsored Access as well as the responsibilities owed by Sponsored Members. The proposed rule is similar to other exchange rules.

The proposed rule change does not impose any undue burden on competition, rather it seeks to uniformly apply both Rule 4611 and new Rule 4615 to all members, equity and options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and by its terms does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)¹³ of the Act and Rule 19b-4(f)(6) thereunder.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2015-021 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2015-021. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should

submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2015-021 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Brent J. Fields,
Secretary.
[FR Doc. 2015-09764 Filed:
4/27/2015 08:45 am; Publication
Date: 4/28/2015]

¹⁵ 17 CFR 200.30-3(a)(12).